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Commissioner

State of Georgia
Department of Revenue
Legal Affairs & Tax Policy
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NOTICE SUT 2016-002

RE: Amendment of Rule 560-12-1-.16 Direct Pay Reporting.


TO ALL INTERESTED PERSONS AND PARTIES:

In compliance with O.C.G.A. § 50-13-4, the Georgia Department of Revenue gives notice that it proposes to amend Rule 560-12-1-.16 Direct Pay Reporting.

The Department of Revenue will consider the amendment of Rule 560-12-1-.16 at 10:00 a.m. on May 5, 2016 in Suite 4318 of the Department's headquarters at the address below.

The Department must receive all comments regarding the amendment of the above-referenced rule from interested persons and parties no later than 10:00 am on May 5, 2016. Written comments must be sent to: Commissioner, Georgia Department of Revenue, 1800 Century Blvd. N.E., Suite 15300, Atlanta, GA 30345-3205. Electronic comments must be sent to regcomments@dor.ga.gov. Facsimile comments must be sent to (404) 417-2293. Please reference "Notice Number SUT 2016-002" on all comments.

Dated: April 4, 2016


Lynnette T. Riley
Commissioner
Georgia Department of Revenue

SYNOPSIS

GEORGIA DEPARTMENT OF REVENUE SALES AND USE TAX DIVISION

CHAPTER 560-12-1 ADMINISTRATIVE RULES AND REGULATIONS

560-12-1-.16. Direct Pay Reporting.

The Georgia Department of Revenue proposes to amend Rule 560-12-1-.16 “Direct Pay Reporting” by making changes as indicated by underline and strikethrough on the attached copy of the Rule.

The purpose of the amended Rule is to set forth rules for direct payment permits. The main features of the Rule are as follows:

- Paragraph 1, Definition.
 - Paragraph 2, Expiration of direct payment authorization.
 - Paragraph 3, Application Process.
 - Paragraph 4, Waiver of Interest.
 - Paragraph 5, Reporting of Tax.
 - Paragraph 6, Certain Transactions Not Permitted.
 - Paragraph 7, Permit Holder's Duties.
 - Paragraph 8, Vendor's Responsibilities.
 - Paragraph 9, Nontransferable.
 - Paragraph 10, Business Restructuring.
 - Paragraph 11, Revocation of Permit.
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1 **RULES**
2 **OF**
3 **DEPARTMENT OF REVENUE**
4 **SALES AND USE TAX DIVISION**

5
6 **CHAPTER 560-12-1**
7 **ADMINISTRATIVE RULES AND REGULATIONS**

8 **560-12-1-.16. Direct Pay Reporting.**

9 **(1) Definition.** "Direct payment permit" means a
10 permit issued by the Department of Revenue that allows
11 the holder of such permit to accrue and pay state and
12 local sales and use taxes directly to the Department.

13 **(2) Expiration of direct payment authorization**
14 ~~issued prior to October 1, 2016.~~

15 **(a)** All permits, letters, and certificates not issued prior
16 ~~to October 1, 2016 authorizing taxpayers to report and~~
17 ~~pay sales and use tax directly to~~ through the
18 ~~Department~~ Georgia Tax Center online application process
19 will expire on ~~December 31, 2016~~ and can no longer be
20 used to make purchases after ~~that date~~ December 31,
21 2016.

22 **(b)** Direct payment permits issued ~~on or after October 1,~~
23 ~~2016~~ through the Georgia Tax Center online application
24 process will be effective the later of January 1, 2017 or the
25 date of issuance.

26 **(3) Application Process.**

27 **(a)** ~~Applicants for~~ To obtain a direct payment permit
28 ~~that is effective on or after January 1, 2017, a taxpayer~~
29 ~~must apply to the Department on an application~~
30 ~~containing~~

- 31 1. the applicant's name, address sales and use tax
32 account number(s) for which direct payment will be made;
33 and have purchased more than \$2 million of tangible
34 personal property in the twelve months prior to
35 application or have purchased an annual average amount
36 exceeding \$2 million of tangible personal property during
37 the thirty-six months prior to application;
- 38 2. be classified on the taxpayer's previous year's federal
39 income tax return under one of the following North
40 American Industry Classification System (NAICS) codes:
- 41 (i) National Industry Code 517110 - Wired
42 Telecommunications Carriers.
- 43 (ii) National Industry Code 517210 - Wireless
44 Telecommunications Carriers (except Satellite).
- 45 (iii) National Industry Code 517410 - Satellite
46 Telecommunications.
- 47 (iv) NAICS Industry Code 48111 - Scheduled Air
48 Transportation.
- 49 (v) NAICS Industry Code 48211 - Rail Transportation.
- 50 (vi) Industry Group Code 4841 - General Freight
51 Trucking.
- 52 (vii) Economic Sector Code 21 - Mining, Quarrying, and
53 Oil and Gas Extraction.
- 54 (viii) Economic Sector Code 22 – Utilities, or
55 (ix) Economic Sector Codes 31-33 – Manufacturing;
- 56 3. fully and accurately complete a direct payment
57 permit application online through the Georgia Tax
58 Center;

59 4. agree to waive interest on refunds of sales and use tax
60 remitted for purchases made on or after January 1, 2017
61 without the payment of tax to a vendor; and

62 ~~5. an attestation~~attest that:

63 (i) the applicant is able to comply with the sales and use
64 tax laws and reporting and payment requirements;

65 (ii) the applicant ~~is current~~not delinquent on ~~all~~any tax
66 filings ~~and/or~~ payments in this state; and

67 (iii) direct payment will benefit the applicant's tax
68 compliance by accomplishing one or more of the following:

69 (I) reduced administrative work in determining
70 taxability or collecting, verifying, calculating, or remitting
71 the tax;

72 (II) improved compliance with the tax laws of this state;

73 (III) improved compliance in circumstances where
74 determination of taxability of the item is difficult or
75 impractical at the time of purchase;

76 (IV) more accurate calculation of the tax where new or
77 electronic business processes such as electronic data
78 interchange, evaluated receipts settlement, or
79 procurement cards are utilized; or

80 (V) more accurate determination and calculation of tax
81 where significant automation and/or centralization of
82 purchasing and/or accounting processes have occurred
83 and the applicant must comply with the laws and
84 regulations of multiple state and local jurisdictions.

85 (b) The Department will issue one permit for each legal
86 entity that meets the requirements of this Rule. The
87 permit is valid for purchases of property delivered to any
88 of the entity's locations.

89 (c) Notwithstanding Subparagraphs (3)(a)1. and 2., the
90 Department may grant a direct payment permit if the
91 Department determines that granting the permit will
92 facilitate and expedite the collection of tax at the proper
93 rates.

94 **(4) Waiver of Interest.**

95 (a) In exchange for the privilege of making purchases
96 with a direct payment permit, permit holders agree to
97 waive interest on refunds of ~~taxes~~ sales and use tax
98 remitted ~~on~~for purchases made with the direct payment
99 permit. (a) Use of a direct payment permit to make
100 purchases on or after January 1, 2017 constitutes the
101 permit holder's waiver of interest with respect to any
102 refunds of tax overpaid for those purchases without the
103 payment of tax to a vendor.

104 (b) Examples.

105 1. (b) John Smith A taxpayer makes purchases on
106 January 1, 2017 without the payment of sales tax using
107 his a direct payment permit. In ~~September~~February 2017
108 he the taxpayer remits taxes due on the purchases. On
109 February 1, 2018 he the taxpayer requests a refund for the
110 overpayment of the taxes. Because Mr. Smith the
111 taxpayer made the purchases on or after January 1, 2017
112 using his direct without the payment permit of tax, Mr.
113 Smith the taxpayer will not receive interest on his its tax
114 refund.

115 2. A taxpayer that holds a direct payment permit and
116 qualifies for the manufacturing exemptions contained in
117 O.C.G.A. § 48-8-3.2 purchases both taxable items and
118 exempt items from a vendor in one transaction. The
119 vendor charges the taxpayer sales tax on the entire
120 purchase. The taxpayer submits a valid refund claim for

121 the sales tax it paid to the vendor for the exempt items.
122 The taxpayer is entitled to interest on the tax it paid to
123 the vendor on the exempt items.

124 3. A taxpayer that holds a direct payment permit and
125 qualifies for the manufacturing exemptions contained in
126 O.C.G.A. § 48-8-3.2 purchases both taxable items and
127 exempt items from a vendor in one transaction. The
128 taxpayer supplies the vendor with Sales and Use Tax
129 Certificate of Exemption Form ST-5M. The vendor
130 charges no sales tax on the entire purchase. The taxpayer
131 correctly remits tax due on the taxable items directly to
132 the Department and erroneously remits to the
133 Department tax on the exempt items. When the taxpayer
134 submits a claim for refund of the tax paid on the exempt
135 items, the taxpayer is not entitled to interest on such tax.

136 **(5) Reporting of Tax.** Each holder of a valid direct
137 payment permit must accrue and pay directly to the
138 Department the taxes due for all taxable property and
139 services purchased ~~using a direct~~ without the payment
140 ~~permit of tax~~. Such taxes are due and payable on the sales
141 and use tax return next due following the date on which a
142 determination of taxability is, or in the exercise of
143 reasonable care should be, made for a given transaction;
144 ~~unless otherwise provided by written agreement between~~
145 ~~the taxpayer and the Department.~~

146 **(6) Certain Transactions Not Permitted.**
147 ~~Use~~ Effective January 1, 2017, the use of a direct payment
148 permit is prohibited for

149 (a) purchases of fuels subject to "prepaid local tax" as
150 defined in O.C.G.A. § 48-8-2;

151 ~~(a)-(b)~~ purchases of meals, beverages, or tobacco;

152 ~~(b)~~ ~~(c)~~ purchases of local telephone services,
153 transportation of persons, or lodging accommodations and
154 ancillary charges associated with lodging
155 accommodations;

156 ~~(e)~~ ~~(d)~~ purchases of admissions to places of amusement,
157 entertainment, or athletic events; admissions to displays
158 or exhibitions; participation in games or sports; or charges
159 for the use of amusement devices; and

160 ~~(d)~~ ~~(e)~~ rental charges for periods of 31 or fewer
161 consecutive days of motor vehicles required to be titled in
162 this state.

163 **(7) Permit Holder's Duties.** The Beginning January 1,
164 2017, the holder of a direct payment permit must

165 **(a)** ~~furnish a copy of the direct payment permit to each~~
166 ~~vendor from which the holder makes purchases tangible~~
167 ~~personal property or services. For purchases made~~
168 ~~using without a charge for tax a copy of the holder's direct~~
169 ~~payment permit, unless the holder has previously~~
170 ~~furnished a direct payment permit, a permit holder is not~~
171 ~~required to present an additional exemption~~
172 ~~certificate that vendor and is not, except as otherwise~~
173 ~~provided, required to pay sales tax to the holder's such~~
174 ~~permit is valid at the time of re-application; however, the~~
175 ~~holder must furnish a copy of the permit upon request of~~
176 ~~any of its vendors as prescribed in O.C.G.A. § 48-8-35;~~

177 **(b)** abide by the terms and conditions of this Rule for all
178 purchases made without the payment of tax;

179 **(c)** ~~(b)~~ accrue and remit state and local sales and use
180 tax directly to the Department on all taxable property and
181 services not taxed at the time of sale;

182 ~~(d) (e)~~ maintain and make available upon Department
183 request all records that are necessary to determine the
184 correct tax liability;

185 ~~(e) (d)~~ file sales and use tax returns and pay any sales
186 and use tax due on a monthly basis unless otherwise
187 permitted by the Department; and

188 ~~(f) (e)~~ maintain good standing ~~not be delinquent~~ with
189 respect to ~~all tax laws of this state~~ any taxes administered
190 by the Department.

191 **(8) Vendor's Responsibilities.** ~~Receipt in good faith of~~
192 ~~the direct payment permit, or other acceptable evidence~~
193 ~~that the holder has been granted~~

194 (a) Beginning January 1, 2017, a direct payment
195 permit, relieves the vendor is relieved of the responsibility
196 of collecting the sales tax on sales made to a direct
197 payment permit holder on qualifying all transactions-,
198 except for those transactions listed in Paragraph (6), with
199 a purchaser who has provided a direct payment permit,
200 even if the permit expired before January 1, 2017, unless
201 the seller has received notice of the revocation or
202 voluntary surrendering of the permit.

203 (b) Vendors who make sales on which the tax is not
204 collected by reason of the provisions of this Rule must
205 maintain records in such manner that the amount
206 involved and identity of the purchaser may be
207 ascertained for a minimum of three years.

208 **(9) Nontransferable.** A direct payment permit is not
209 transferable; therefore, the use of a direct payment permit
210 may not be transferred or assigned to a third party
211 (including but not limited to a subsidiary, affiliate, or new
212 business entity created in a restructuring).

213 **(10) Business Restructuring.** In the case of a
214 business restructuring that requires a new Employer Tax
215 Identification Number or Federal Tax Identification
216 Number, the permit holder must apply for a new permit.

217 **(11) (10) Revocation of Permit.** Effective January 1,
218 2017, direct~~Direct~~ payment permits may be denied or
219 revoked by the Department at any time the Department
220 determines that the ~~person~~taxpayer holding the permit
221 has not complied with the provisions of this Rule or that
222 the revocation would be in the best interests of the state.
223 The notice of revocation must be in writing and effective
224 as of the end of the direct payment permit holder's normal
225 reporting period. Any ~~person~~taxpayer whose direct
226 payment permit is either voluntarily forfeited or revoked
227 by action of the Department must return the permit to
228 the Department and immediately notify all vendors
229 ~~from to which purchases of taxable items are made~~the
230 ~~taxpayer furnished the permit~~ that such ~~person~~taxpayer's
231 direct payment permit is no longer valid.

232 ~~**(11) Business Restructuring** In the case of a business~~
233 ~~restructuring, the permit holder must apply for a new~~
234 ~~permit if the Department issues a new State Tax~~
235 ~~Identification Number.~~

236 **Authority:** O.C.G.A. §§ 48-2-7, 48-2-12.